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HOUSE BILL 492

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO LICENSING; AMENDING THE ACUPUNCTURE AND ORIENTAL
MEDICINE PRACTICE ACT; CLARIFYING THE PROCEDURES AND SUBSTANCES
THAT ARE WITHIN THE SCOPE OF ACUPUNCTURE AND ORIENTAL MEDICINE;
PROVIDING FOR REFUNDABLE FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-14A-3 NMSA 1978 (being Laws 1993,
Chapter 158, Section 11, as amended) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and
Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles
inserted into and removed from the body and the use of other
devices, modalities and procedures at specific locations on the
body for the prevention, cure or correction of any disease,
illness, injury, pain or other condition by controlling and

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1 regulating the flow and balance of energy and function to
2 restore and maintain health;

3 B. "bioidentical hormones" means compounds, or salt
4 forms of those compounds, that have exactly the same chemical
5 and molecular structure as hormones that are produced in the
6 human body;

7 [~~B.~~] C. "board" means the board of acupuncture and
8 oriental medicine;

9 [~~C.~~] D. "doctor of oriental medicine" means a
10 person licensed as a physician to practice acupuncture and
11 oriental medicine with the ability to practice independently,
12 serve as a primary care provider and as necessary collaborate
13 with other health care providers;

14 [~~D.~~] E. "moxibustion" means the use of heat on or
15 above specific locations or on acupuncture needles at specific
16 locations on the body for the prevention, cure or correction of
17 any disease, illness, injury, pain or other condition;

18 [~~E.~~] F. "oriental medicine" means the distinct
19 system of primary health care that uses all allied techniques
20 of oriental medicine, both traditional and modern, to diagnose,
21 treat and prescribe for the prevention, cure or correction of
22 disease, illness, injury, pain or other physical or mental
23 condition by controlling and regulating the flow and balance of
24 energy, form and function to restore and maintain health;

25 [~~F.~~] G. "primary care provider" means a health care

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1 practitioner acting within the scope of the health care
2 practitioner's license who provides the first level of basic or
3 general health care for a person's health needs, including
4 diagnostic and treatment services, initiates referrals to other
5 health care practitioners and maintains the continuity of care
6 when appropriate;

7 [~~G.~~] H. "techniques of oriental medicine" means:

8 (1) the diagnostic and treatment techniques
9 used in oriental medicine that include diagnostic procedures;
10 acupuncture; moxibustion; manual therapy, also known as tui na;
11 other physical medicine modalities and therapeutic procedures;
12 breathing and exercise techniques; and dietary, nutritional and
13 lifestyle counseling;

14 (2) the prescribing, administering, combining
15 and providing of non-injectable herbal medicines, homeopathic
16 medicines, vitamins, minerals, enzymes, glandular products,
17 natural substances, natural medicines, protomorphogens, live
18 cell products, [~~gerovital~~] amino acids, lipids, carbohydrates,
19 proteins, dietary and nutritional supplements, cosmetics as
20 they are defined in the New Mexico Drug, Device and Cosmetic
21 Act and nonprescription drugs as they are defined in the
22 Pharmacy Act; and

23 (3) the prescribing, administering and
24 providing of devices, restricted devices and prescription
25 devices, as those devices are defined in the New Mexico Drug,

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1 Device and Cosmetic Act, if the board determines by rule that
2 the devices are necessary in the practice of oriental medicine
3 and if the prescribing doctor of oriental medicine has
4 fulfilled requirements for prescriptive authority in accordance
5 with rules promulgated by the board for the devices enumerated
6 in this paragraph; and

7 [H.] I. "tutor" means a doctor of oriental medicine
8 with at least ten years of clinical experience who is a teacher
9 of acupuncture and oriental medicine]."

10 Section 2. Section 61-14A-8.1 NMSA 1978 (being Laws 2000,
11 Chapter 53, Section 12, as amended) is amended to read:

12 "61-14A-8.1. EXPANDED PRACTICE AND RESTRICTIVE
13 PRESCRIPTIVE AUTHORITY--CERTIFICATIONS.--

14 A. The board shall issue certifications in the four
15 expanded practices of basic injection therapy, injection
16 therapy, intravenous therapy and bioidentical hormone therapy,
17 as determined by rule of the board, for expanded practice and
18 prescriptive authority only for the substances enumerated in
19 [~~Paragraphs (1) and (2) of~~] Subsection [G] B of this section to
20 a doctor of oriental medicine who has submitted completed forms
21 provided by the board, paid the application fee for
22 certification and submitted proof of successful completion of
23 additional education and training required by rule of the
24 board. The board shall adopt the rules determined by the board
25 of pharmacy for additional education and training required for

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1 the prescribing, administering, compounding or dispensing of
2 [~~caffeine, procaine, oxygen, epinephrine and bioidentical~~
3 ~~hormones~~] the substances listed in Subsection B of this
4 section. The board and the board of pharmacy shall consult as
5 appropriate.

6 [~~B. The board shall issue certifications in the~~
7 ~~four expanded practices of basic injection therapy, injection~~
8 ~~therapy, intravenous therapy and bioidentical hormone therapy.~~

9 G.] B. The expanded practice and prescriptive
10 authority shall include

11 [~~(1) the prescribing, administering,~~
12 ~~compounding and dispensing of herbal medicines, homeopathic~~
13 ~~medicines, vitamins, minerals, amino acids, proteins, enzymes,~~
14 ~~carbohydrates, lipids, glandular products, natural substances,~~
15 ~~natural medicines, protomorphogens, live cell products,~~
16 ~~gerovital, dietary and nutritional supplements, cosmetics as~~
17 ~~they are defined in the New Mexico Drug, Device and Cosmetic~~
18 ~~Act and nonprescription drugs as they are defined in the~~
19 ~~Pharmacy Act; and~~

20 ~~(2)]~~ the prescribing, administering,
21 compounding and dispensing of [~~the following~~] drugs, dangerous
22 drugs or controlled substances as [~~they~~] drugs, dangerous drugs
23 and controlled substances are defined in the New Mexico Drug,
24 Device and Cosmetic Act, the Controlled Substances Act or the
25 Pharmacy Act, if the prescribing doctor of oriental medicine

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1 has fulfilled the requirements for expanded practice and
2 prescriptive authority in accordance with the rules promulgated
3 by the board for the substances enumerated in this ~~[paragraph]~~
4 subsection.

- 5 ~~[(a) sterile water;~~
- 6 ~~(b) sterile saline;~~
- 7 ~~(c) sarapin or its generic;~~
- 8 ~~(d) caffeine;~~
- 9 ~~(e) procaine;~~
- 10 ~~(f) oxygen;~~
- 11 ~~(g) epinephrine;~~
- 12 ~~(h) vapocoolants;~~
- 13 ~~(i) bioidentical hormones;~~
- 14 ~~(j) biological products, including~~
15 ~~therapeutic serum; and~~
- 16 ~~(k) any of the drugs or substances~~
17 ~~enumerated in Paragraph (1) of this subsection if at any time~~
18 ~~those drugs or substances are classified as dangerous drugs or~~
19 ~~controlled substances.~~

20 D.] Except as limited or restricted by federal or
21 state law, the drugs, dangerous drugs or controlled
22 substances listed in this subsection are authorized in the
23 specified modes of administration as follows:

24 (1) basic injection certification and
25 prescriptive authority is provided for the intradermal,

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1 intramuscular and subcutaneous injection of homeopathics,
2 dextrose, enzymes except urokinase, hyaluronic acid,
3 minerals, sarapin, sodium chloride, sterile water, topical
4 vapocoolants and vitamins;

5 (2) injection certification and prescriptive
6 authority is provided for the substances in Paragraph (1) of
7 this subsection and for non-epidural, non-intrathecal
8 injection of alcohol, amino acids, autologous oxygenated
9 blood, autologous blood and appropriate anticoagulant, bee
10 venom, beta glucans, collagenase, dextrose, dimethyl
11 sulfoxide, gammaglobulin, glucose, glucosamine, glycerin,
12 hyaluronidase, methylsulfonylmethane, phenol,
13 phosphatidylcholine, procaine, sodium hyaluronate and sodium
14 morrhuate;

15 (3) intravenous certification and
16 prescriptive authority is provided for amino acids, calcium
17 ethylenediaminetetraacetic acid, oral dimethylsuccinic acid,
18 dextrose, glutathione, lactated ringers, minerals,
19 phosphatidylcholine, sodium bicarbonate, sodium chloride,
20 sodium morrhuate, sterile water, water soluble vitamins and
21 autologous oxygenated blood infusion, including ultraviolet
22 radiation of blood, with appropriate anticoagulant, except
23 that authority is not provided for total parenteral
24 nutrition; and

25 (4) non-injectable bioidentical hormone

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1 certification and prescriptive authority is provided for
2 7-keto dehydroepiandrosterone, cortisone,
3 dehydroepiandrosterone, dihydrotestosterone, estradiol,
4 estriol, estrone, hydrocortisone, pregnenolone, progesterone,
5 testosterone, tetraiodothyronine, levothyroxine, thyroxine
6 and triiodothyronine combination, triiodothyronine,
7 liothyronine or desiccated thyroid.

8 C. Subcutaneous epinephrine, inhaled oxygen and
9 additives necessary to stabilize, preserve or balance the pH
10 of approved substances are applicable to any of the
11 certifications in Subsection B of this section.

12 D. Appropriately certified doctors of oriental
13 medicine are authorized to prescribe, use and dispense a
14 compounded drug preparation from Subsection B of this section
15 that is compounded in compliance with state and federal
16 requirements. When compounding drugs for their patients,
17 doctors of oriental medicine certified for expanded practice
18 and prescriptive authority shall comply with the compounding
19 requirements for licensed health care professionals in the
20 United States pharmacopeia and national formulary. A
21 substance is only authorized for use if procured, prescribed,
22 administered, compounded and dispensed in compliance with
23 federal and state law.

24 E. A doctor of oriental medicine or oriental
25 medicine student enrolled in a board-approved educational

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1 course or program leading to certification in one of the
2 oriental medicine expanded practice categories of basic
3 injection therapy, injection therapy, intravenous therapy or
4 bioidentical hormone therapy is authorized to perform the
5 techniques and have the prescriptive authority, for the
6 duration of the course or program, to administer and compound
7 the substances that are authorized in the expanded practice
8 formulary for which the student is studying under the direct
9 supervision of the teacher of the approved expanded practice
10 educational course or program. The student is not authorized
11 to obtain, prescribe or dispense such substances without
12 direct supervision."

13 Section 3. Section 61-14A-16 NMSA 1978 (being Laws
14 1993, Chapter 158, Section 24, as amended by Laws 2001,
15 Chapter 263, Section 1 and Laws 2001, Chapter 266, Section 2)
16 is amended to read:

17 "61-14A-16. FEES.--The board shall establish a schedule
18 of reasonable [~~nonrefundable~~] fees not to exceed the
19 following amounts:

- 20 A. application for licensing \$800;
- 21 B. application for reciprocal licensing 750;
- 22 C. application for temporary licensing 500;
- 23 D. examination, not including the cost of any
24 nationally recognized examination 700;
- 25 E. annual license renewal 400;

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- 1 F. late license renewal 200;
- 2 G. expired license renewal 400;
- 3 H. temporary license renewal 100;
- 4 I. application for approval or renewal of
- 5 approval of an educational program 600;
- 6 J. late renewal of approval of an educational
- 7 program
- 8 200;
- 9 K. annual continuing education provider
- 10 registration 200;
- 11 L. application for extended or expanded
- 12 prescriptive authority 500;
- 13 M. application for externship supervisor
- 14 registration
- 15 500;
- 16 N. application for extern certification . . 500;
- 17 and
- 18 O. any and all fees to cover reasonable and
- 19 necessary administrative expenses."